IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 502 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT ON BEHALF OF
Versus
Y B CHRISTIAN DY.MAMLATDAR CLASS-3

Appearance:
MR ND GOHIL, APP for Petitioner
MR YOGESH S LAKHANI for Respondent No. 1
MR NIGAM R SHUKLA for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. This is a revision application under section 397 read with section 401 of Criminal Procedure Code, at the instance of the State of Gujarat, challenging the order passed below Exh.7 by the learned Special Judge, Ahmedabad City Civil and Sessions Court, in Special Case

No.19/95. The respondent nos.1 and 2 herein were original accused nos.1 and 2 in the aforesaid Special case, wherein they were charged for offences under sections 7, 12, 13(1)(D)(1),(2),(3) of the Prevention of Corruption Act.

2. In the said case the accused gave an application Exh.7 challenging the order of sanction to prosecute the accused on various grounds. This application is a detailed application setting out the grounds of challenge, and at least on a prima facie basis it would appear that the validity of the sanction to prosecute the accused would require examination. The only prayer made in the said application is that the legality and validity of the sanction be examined first before proceeding with the trial.

3. The learned Special Judge, after hearing the parties, allowed the application and directed the prosecution to lead evidence, if any, on the point of sanction and to decide the validity thereof. It is this order which is the subject matter of the present revision.

4. I have heard the learned counsel for the respective parties, carefully perused the impugned order, and have referred to such evidence on record to which my attention has been drawn.

5. It is to be noted that the learned Special Judge has referred to and relied upon a decision of this Court reported in 1980 Criminal Law Journal, page 877, wherein the relevant observation is as under:

> "When there is a serious challenge to the order according sanction, that the learned Special Judge tries and decides that issue first without recording evidence on other issues so that much of duplication, which would be the probable result from the proceedings being quashed on the ground of want of valid sanction, could be avoided."

6. From the facts of the case and from the averments of the parties and the observations made in the impugned order it becomes obvious that the challenge to the legality and validity of the sanction order is not a frivolous challenge. This challenge would certainly have to be met by the prosecution by leading appropriate evidence to justify the sanction order. The only question is whether it should be done at the initial

stage of the trial or during the course of the trial. Looking to the view expressed by this court in the aforesaid decision, it would be more appropriate that the question is decided first so that in case it is found that the sanction order is not sustainable, the time of the court, the prosecution witnesses, etc. is not wasted in a futile exercise.

7. Even otherwise the order passed by the Special Judge cannot be said to be without jurisdiction or in an illegal exercise of his jurisdiction in any manner. I am of the opinion that it is a discretionary order, which does not require interference in the present revision. This revision is accordingly dismissed. Rule is discharged. Interim order stands vacated.

8. The Registry is directed to send the record and proceedings back to the trial court expeditiously, i.e. not later than 16th March 2000.

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